

CHAPTER 14

THE RIGHTS OF WIVES, SONS AND DAUGHTERS IN THE ESTATES
OF THEIR DECEASED HUSBANDS AND FATHERS

GORDON WOODMAN*

This paper is concerned with legal rights, as the term is understood in the legal profession; that is, with rights which the courts will enforce when they are called upon to do so. In the law of Ghana the legal rights of wives, sons and daughters in the estates of their deceased husbands and fathers are determined by two types of law. Firstly, the various systems of customary law provide the principles which define these rights in the majority of instances. However, secondly, customary law has been ousted by statute law in a few cases.

Since this paper is concerned with rights enforceable in the courts, both types of law must be understood in this context. In the case of statute law it is perhaps generally accepted that the words of a properly enacted statute, as interpreted by the courts, constitute law. We may not approve of the enactment; we may disobey it; but we agree that it is the law. However, in the case of customary law it can be more difficult to distinguish what happens in the courts from other factors. Investigation shows that there are instances where the courts apply certain principles, which they call principles of customary law, but which do not correspond to the customary practices of the people concerned. This seems to happen because of two factors. Firstly, courts are not always accurately informed about social practices. They have to decide cases expeditiously, on the basis of such evidence as is put before them; they cannot adopt the more thorough methods of investigation of the anthropologist. Secondly, the courts have adopted the practice of following their own decisions on points of customary

* Dr. Woodman is a senior lecturer in the Faculty of Law, Legon.

law. This has been done largely because justice requires that the law be certain, and so predictable. However, it results in a tendency for erroneous conclusions in particular cases to become embedded in the fabric of legal principles. Thus customary-law rights as enforced in the courts are not necessarily identical with what the anthropologist would find to be customary-law rights. This paper being concerned with rights enforced in the courts, its discussion of customary law is based on an examination of past judicial decisions.¹

While it seems useful to investigate the principles enforced by the courts, there is a danger - to which the academic lawyer is perhaps peculiarly susceptible - of exaggerating their effectiveness. Principles enforced by the courts are of course important. When a court issues an order, it is enforced by the coercive power of the state, which for practical purposes is in the last resort irresistible. Hence the principles on which court orders are based might appear to be, by their very nature, binding on all members of society. However, it must be admitted that there is a series of obstacles in the way of enforcing legal rights. Firstly, a person with a legal right needs to have at least some vague knowledge of the existence of his right. Otherwise he will not even contemplate enforcing it. Then, if he meets with opposition, he must be prepared to go to court; and there may be social pressures against this. Frequently, he must be able to obtain expert legal advice and representation in court; otherwise he may be unable to present his claim in a manner acceptable to the court. Moreover, he must prove the facts which support his claim, and, even when his allegations are true, this is not always possible. Finally, even when he has obtained a court order, he may find it difficult to enforce it against a recalcitrant opponent. Thus although legal rights have some effect on society, it cannot be assumed that they are invariably determinant factors of social behaviour.

Akan customary law and Ewe customary law will be considered in turn. Then there will be a discussion of the legislative provision - the Marriage Ordinance - which in a few cases overrides the

customary law.

Akan Customary Law

Where the deceased husband or father was an Akan, and died intestate, the law governing the distribution of his estate is usually Akan customary law. The courts have assumed, and will probably continue to assume, that the various Akan systems of customary law are generally identical. They have laid it down in innumerable cases that the title to all property which was vested in the deceased passes to what they call his "family".² Two problems arise here: the problem of which property is affected; and the problem of what is meant by his "family".

The property affected is that which was vested in the deceased as an individual during his lifetime. The courts have frequently distinguished this "individually-owned" property from "family property". Family property in the custody of the deceased is not affected by the rule. The principle here is that family property is vested in the legal person of the family, and that this person does not cease to exist on the death of one of its members. Of course, the family will have to appoint someone else to take custody of the property, but that is not a matter of succession to title.³ Individually-owned property includes property acquired by the deceased with the assistance of his wives, sons or daughters, such as farms cultivated with their help. The courts are not normally prepared to hold that this property is owned jointly by the man and his wife or child. They presume that the wife's or child's contribution was given in pursuance of their duty to assist the husband or father in his private enterprises, and was not intended to benefit the contributor. To rebut this presumption requires very clear proof of an agreement to acquire a joint title.⁴

The second problem concerns the word "family". The courts mean by this word, when it is used in the present context, a matrilineage of which the deceased had during his lifetime been a member. This much seems well supported by authorities.⁵ However, it is

not yet clear who precisely constitutes this lineage: whether it consists only of matrilineal descendants of his mother, or of matrilineal descendants of his maternal grandmother, or of some more remote ancestress.⁶ It is suggested that for the purpose of the present discussion, this further question can be left open. It is sufficient to note two consequences of the established rules: (a) that the property vests in a family, which is a group with a corporate personality; and (b) that neither widows nor descendants of the deceased are members of this group.

There is some evidence that moveable property left by the deceased is normally distributed by the family to various individuals, including widows, sons and daughters of the deceased. However, the authorities suggest that they cannot legally compel the family to give them anything, except under a principle to be discussed later.⁷

If the deceased made a will, this may oust the rules of intestate succession. It is now established that a person who is subject to customary law may dispose of his individually-owned property by will. There was once some doubt about this, because one school of lawyers argued that a person should not be entitled to defeat the expectations of his family in this way. It was finally settled that he could, the reason probably being the concern of the courts to extend individual rights as against family rights, and the influence of common law which has traditionally favoured freedom of testation.⁸ A will may be validly made either in customary-law form (by the Akan samansi), or in common-law form (under the English Wills Act, 1837, which is part of the law of Ghana). A will may, of course, contain dispositions in favour of widows, sons and daughters.

These rules give no rights to widows, sons and daughters except where the deceased has chosen to make a will in their favour. They are still the basic law on the subject, but they have been subjected to certain qualifications. The law is not entirely settled on the scope of these, so it will be necessary to give some detail about its development.

The earliest period from which we have legal

authorities is around the time when John Mensah Sarbah published his book Fanti Customary Laws. The first edition of this book (which is regarded as authoritative by the courts) was published in 1897. Sarbah himself, and a number of decisions given at this time, held that widows, sons and daughters had a right to be provided for life with living accommodation by the family of the deceased. If the deceased had left an individually-owned house to the family, the widows, sons and daughters were entitled to live there, but even if he had lived in a house belonging to the family, they had to be given accommodation in it. The right was said to be "subject to good behaviour". The principles were not fully discussed in any of the authorities. It is possible that in practice accommodation would have amounted to maintenance, although this was not said. There was no discussion of the training of infant sons and daughters.⁹

For the next sixty years the authorities were almost completely silent. There were, however, some suggestions that the old right of accommodation was merely an aspect of a more general, legally enforceable right of maintenance.¹⁰

The modern developments are embodied in a few decisions only, some of which it is necessary to cite. Mr. Justice Ollennu gave several decisions between 1959 and 1961 dealing with the rights of widows. His views are summarised in the following passage from his judgment in Yaotey v. Quaye in 1961:¹¹

"Now one of the incidents of marriage under customary law is that the husband is responsible to provide maintenance and accommodation for the wife, and after his death that responsibility devolves upon his family. Consequently the head of the family is bound to provide maintenance for the widow of a deceased member of the family during the period of the funeral. Thereafter, the family must give the widow to a member of the family as his customary wife, and that member of the family to whom the family assign the widow provides drink to indicate his acceptance of the widow. That man need not in actual fact live with the widow as his wife, but

stands in the shoes of the deceased and has to maintain the widow as he would a wife married by himself. If the family of the deceased feel that they are unable to maintain the widow, they must give her a send-off and if the widow does not want to remain the responsibility of her husband's family, she would take proper steps to determine the relationship. The proceedings for the separation of the widow from the family of her deceased husband is, in the eyes of the customary law, the same as divorce proceedings."

(Although this was a Ga case, it seems clear that the judgment was intended to set out principles applicable in Akan law also.)

The rights of sons and daughters had to wait until 1963 for further clarification. In that year the Supreme Court held in Manu v. Kumah¹² that a father had in his lifetime an obligation to maintain and train his sons and daughters, and that on his death this obligation devolved on the successor, at least to the extent of the estate. In that case no claim to land was involved, and the court merely ordered a sum of money to be paid to the mother of the children to reimburse her for expenditure already made. In Quaico v. Fosu¹³ Mr. Justice Archer elucidated more fully the principles of the decisions. The action in that case was brought by the successor of an Akan man against his widows for a declaration of the nature and extent of the interests in the estate of the defendants, their children by the deceased, and the family. The court gave the following declaration:

- "(1) That the defendants and their children have an interest in the estate of [the deceased].
- "(2) (a) The defendants as widows have a right of residence during widowhood in any house built on land self-acquired by the deceased or to dwell on any land acquired by the deceased.
- (b) The children and their issue have also a right to occupy as a residence any house built on land self-acquired by the deceased during their life-time subject to good behaviour.
- (c) The interest of the widows and the children is equivalent to a determinable life tenancy

which entitles them to a share of the income accruing from the houses in which they are entitled to reside.

(d) The widows and children are entitled to be maintained by the Head of Family or successor by the payment of adequate allowance to the widows during their widowhood and also to the children until they are capable of maintaining themselves. These payments may be periodical or amount to annuities.

- "(3) By Akan customary law, the self-acquired property of the deceased has become family property on his death intestate and the maternal family have become the successors to the estate subject to the life interest of the deceased's children and the occupational rights of the widows during their widowhood in the houses built by the deceased on self-acquired land.
- "(4) Since it seems that the widows and the children have an interest not only in the immovable property but have to be maintained as of right from the whole estate, they are akin to beneficiaries who derive some advantages or benefit from the whole estate. Their interest and rights to maintenance are subject to the life interest of each member of the maternal family in the whole estate vested in the successor. If that is the case, their interests are inextricably mixed up in the indivisible estate and accordingly they are entitled to shares in the estate if ultimately the whole estate is converted into money or partitioned. The widows and children do not inherit but they claim interests from the inheritors, that is, the maternal family through the head of family or the successor."14

The law seems here to be at an early stage in the development of important new principles. The following questions appear to be still unclear: (a) Can a right of accommodation be enforced in respect of property which was family property in the lifetime of the deceased? Some of the cases give such a right. However, in Manu v. Kuma it was suggested that the right of maintenance might be restricted to the value of the estate, and in Quaico v. Fosu the right of accommodation was restricted to land self-acquired by the

deceased. The clear modern distinction between property of a family and property of a member may lead to a negative answer to this question. (b) Is the consent of the widows and children required for a valid sale of property in which they might otherwise be accommodated? The tendency in Quaico v. Fosu to regard the right as being easily convertible into financial support suggests a negative answer. (c) If this property is sold, how are the shares of the widows and children in the sale price calculated? This raises the question: whether the claims of the widows and children of a male member should be weighed against the claims of family members. (d) In cases of disagreement, who is entitled to decide that the right to accommodation shall be commuted to money payment? If the money payment is regarded as being equally good, either side might have this right. (e) Is the children's right enjoyed for life or until maturity? The modern cases suggest that the right is to be maintained only until the son or daughter has been adequately prepared to maintain himself, although the right of residence was held in Quaico v. Fosu to be for life. (f) What precisely are the rights of the parties if a widow decides to leave her husband's family, or if the family decides not to keep her? The decision in Quaico v. Fosu suggests that she has vested rights which might be voluntarily abandoned by her, but could not be unilaterally reduced in value by the family.

Finally, it is unclear how far the law of wills is affected by these recent developments. It was mentioned earlier that a testator is today free to defeat the expectations of his family. Is he equally free to defeat the expectations of his wives, sons and daughters? It is arguable that he is not, on two grounds. Firstly, the trend of judicial development in this century has been towards reducing the incidence of family property, but increasing the rights of wives, sons and daughters. It is consistent with this to argue that today a will can defeat the expectations of a family, but not those of widows, sons and daughters. Secondly, the rights of widows, sons and daughters are said to be based on a continuation after a man's death of legal obligations which he owed then during his

lifetime. Since he could not have denied their rights while alive, he should not be allowed to do so at his death. However, this question has not yet come before the courts.¹⁵

Ewe Customary Law

On the death intestate of an Ewe man, the applicable law is normally Ewe customary law. However, there are not yet enough reported judicial decisions for one to extract clearly established principles on many questions in this system. It is sometimes suggested that Ewe law applies exactly the same principles as the Akan law, with the one basic difference that patrilineal relationships are relevant instead of matrilineal relationships.¹⁶ On that view, a man's individual property would pass on his death intestate to his family, a term which in this case would mean a patrilineage to which he had belonged during his lifetime. However, the decisions in particular cases do not prove these generalisations.

There is a comparatively large volume of authority on Anlo law. This establishes that a man's property passes on his death intestate to a group consisting of his sons and daughters. The courts consider that all children, both sons and daughters, are entitled to exactly equal interests.¹⁷ For other Ewe groups there are few authorities. In most cases only one decision gives any guidance for each group. These cases are generally consistent with Anlo principles, but may be insufficient to establish that these principles apply in their entirety to each group. Other sources, such as the writings of anthropologists, may perhaps indicate the customary practices, and it could be argued that they might provide evidence of what would be proved to and eventually accepted by the courts as the customary law. However, little has been written about these practices, apart from those of the Anlo. Moreover, for reasons already given, it does not seem safe to assume that what the anthropologists find to be the customary law will coincide with what the courts will hold to be the law.

Thus it is probable that a man's sons and daughters belong to the group which inherits his

property, and possibly that they alone constitute it. The discussion by the courts of widows' rights in Akan cases has implied that the same principles apply throughout Ghana, but there have been no reported Ewe cases to confirm this. There is no authority indicating clearly a person's powers of testamentary disposition in Ewe customary law.

Statute Law

The principles of customary law are subject to legislative amendment or abolition. It is therefore necessary to examine the effect of the relevant statute in force today. This is the Marriage Ordinance, which was first enacted in 1884. The policy of the ordinance is to provide a legally monogamous form of marriage for those who wish to make use of it, as an alternative to marriage under a system of customary law. This option has not in fact been used in a large proportion of cases. According to the 1960 census fewer than 4.1% of marriages of Akan people were ordinance marriages, and fewer than 3.6% of marriages of Ewe.¹⁸ When the statute was enacted it was considered that succession was intimately connected with marriage, so that a new form of marriage required a new form of succession.

Section 48 of the Marriage Ordinance, which deals with succession, is set out in full in an appendix to this paper. It is sufficient now to summarise its provisions. There are two alternative conditions for its application. Firstly, it applies if the deceased was subject to customary law, married under the ordinance, and died intestate survived by a widow or issue of the ordinance marriage. It is assumed by the courts that virtually all Ghanaians are subject to customary law. The requirement of survival by a widow or issue of the ordinance marriage seems to be a requirement that some person closely connected with the ordinance marriage be still alive. The effect is that, if a man marries under the ordinance at some time in his life, he is affected by the ordinance so long as the wife or any issue of the ordinance marriage survives, but no longer. Secondly, section 48 applies if the deceased was the issue of an

ordinance marriage, and dies intestate. "Issue" generally means descendant to any degree, but it may be restricted here to descendants in the first generation. Presumably this provision is based on the assumption that the issue of an ordinance marriage will grow up in an environment which will lead him to prefer the new type of succession to that of customary law..

Once it is clear that section 48 of the ordinance applies, its effect must be considered. The rules are complicated, but here it is necessary to consider only the rights of widows, sons and daughters of the deceased. Section 48 provides firstly that one-third of the property passes under the appropriate customary law, and that the remaining two-thirds pass under certain rules once applicable in England. These English rules have the effect of giving four-ninths of the estate to the children or other issue of the deceased in equal shares, and the remaining two-ninths to the widow. If there is no widow, the issue also take the share which she would have had. If there are no issue, the widow takes one-third instead of two-ninths, and the remaining one-third passes to more remote relatives.

It may be noted that widows and children who benefit under these provisions have rights of a different type from those of widows and children in Akan customary law. Under the ordinance they take proportions of the estate. To use the language of Mr. Justice Archer in Quaico v. Fosu, they do not merely claim interests from the inheritors; they are themselves in the class of inheritors.

The application of these rules has required a clarification of the meaning of the terms "wife" and "issue". Here the courts have changed their opinion in modern times. The view originally adopted was that only a wife or issue of an ordinance marriage could benefit from the provisions. Hence if, for example, a man was survived by a number of children of an ordinance marriage, and a number of other children, only the "ordinance" children would benefit.

However, in 1959 the Court of Appeal laid it down in Coleman v. Shang¹⁹ that the provisions could benefit any wife whose marriage was recognised by the law of Ghana, whether by customary law or the Ordinance, and any issue who was legitimate under any of the systems of law in force in Ghana. The technical argument for this change can be briefly stated. The ordinance distinguishes ordinance wives and issue from other wives and issue for the purpose of setting a condition precedent to the operation of section 48. It says that the deceased must be survived by the wife or issue of the ordinance marriage (or must himself be the issue of such a marriage) if section 48 is to apply. But it does not apply this distinction to beneficiaries under the section. Once it is established that section 48 applies, it is quite possible for it to be applied to benefit persons other than an ordinance wife or issue. The social policy behind the change in the law was probably an opposition to treatment of a man's customary-law wives and children less favourable than the same man's ordinance wives and children.

The case of Coleman v. Shang provides an example of the new application. The deceased man in that case had married three women in succession. First he married a wife by customary law, and had children by her. Subsequently this marriage was terminated, he married another woman under the ordinance, and had children by her. The ordinance marriage ended with the death of the wife; he then married a third woman by customary law, but he had no more children. When he died intestate, he was survived by one of the children of the ordinance marriage. Consequently, the court held, section 48 was to be applied, the necessary condition precedent having been satisfied. However, the provisions operated not only to the benefit of the child by the ordinance marriage, but also to the benefit of his surviving customary-law wife and of his children by the first, customary-law marriage. The only children who did not benefit were certain children born to him during the subsistence of his second, ordinance marriage, by someone other than his ordinance wife. They were necessarily illegitimate, because to recognise them would infringe the monogamous nature of the ordinance marriage.

(In fact their mother was the woman who eventually became his third wife, but their illegitimate status could not be remedied by the subsequent marriage.)

It is worth mentioning a somewhat unexpected result of this reasoning. It means that a customary-law wife, or the child of a customary-law marriage, may be entitled to a portion of a man's estate, not because of any provisions of customary law, but because the man once married someone else under the ordinance, and is survived by issue of that ordinance marriage.

A few more observations may be made on the ordinance. It has been seen that the modern Akan law confers a right of maintenance on wives and children. It was suggested that perhaps this right could not be defeated by a will made by the deceased. However, this possibility affects the Marriage Ordinance. Section 48 is stated to apply to property of which the deceased could have disposed by will. Therefore, it could be argued that the rights of maintenance of widows and children must first be met, and that section 48 will then operate only on what is left. However, this argument would produce strange results. The right of maintenance is enjoyed only by customary-law wives, not by ordinance wives, because the rights of the latter as against their husbands depend on common law or English law, which do not give a wife a right of maintenance after her husband's death. On similar grounds, it is not certain that the children of an ordinance marriage could claim maintenance under customary law. Thus there would be a distinction drawn to the detriment of ordinance wives and children. Moreover, it could be argued that, since section 48 gives shares in the estate to widows and children, there is no necessity to give priority to their customary-law rights of maintenance: the ordinance protects them adequately.

Further questions arise in respect of the one-third of the estate which passes under customary law. If the Ewe customary law would give an entire estate to the sons and daughters, then in the case of a deceased Ewe to whose estate section 48 applies, this one-third will pass to the sons and daughters. However, it is very unlikely that Ewe customary law

recognises even the restricted type of illegitimacy which applies under the ordinance. Thus a child excluded by illegitimacy from a share in the two-thirds passing under English law, may still have his share in the one-third which passes under customary law 20.

It appears that the possible rights of widows in Ewe law, and the rights of widows, sons and daughters in Akan law, are rights of maintenance and training. It is possible for customary-law wives, and children whose rights are governed by customary law, to claim rights of maintenance out of this one-third? If they can, these claims may in some cases absorb the entire one-third. Or can they merely claim one-third of the maintenance to which they would have been entitled if customary law had governed the whole estate? Or should it be argued that, as they take shares of the two-thirds which pass under the English law, these shares are intended to be adequate for them, and they cannot claim any more for their maintenance? If section 48 remains on the statute book much longer, these questions may have to be answered by the courts, but it seems impossible to predict the answers.

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Appendix: Text of the Marriage Ordinance (Cap.127, Laws of the Gold Coast, 1951 ed.), Section 48

Where any person who is subject to native law or custom contracts a marriage whether within or without the Colony in accordance with the provisions of this Ordinance or of any other enactment relating to marriage, or has contracted a marriage prior to the passing of this Ordinance which marriage is validated hereby, and such person dies intestate on or after the 15th day of February, 1909, leaving a widow or husband or any issue of such marriage;

And also where any person who is issue of any such marriage dies intestate on or after the said 15th day of February, 1909, the personal property of such intestate, and also any real property of which the said intestate might have disposed by will shall be distributed or descend in manner following, viz:

Two-thirds in accordance with the provisions of the law of England relating to the distribution of personal estates of intestates in force on the 19th day of November, 1884, any native law or custom to the contrary notwithstanding; and one-third in accordance with the provisions of the native customary law which would have obtained if such person had not been married under this Ordinance.

Provided:

- (i) That where by the law of England, any portion of the estate of such intestate would become a portion of the casual hereditary revenues of the Crown such portion shall be distributed in accordance with the provisions of the native customary law, and shall not become a portion of the said casual hereditary revenue;
- (ii) That real property, the succession to which cannot by the native customary law be affected by testamentary disposition shall descend in accordance with the provisions of such native customary law, anything herein to the contrary notwithstanding.

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1. This point is argued more fully in "Some Realism About Customary Law - the West African Experience" (1969) Wisconsin Law Review 128.

2. Support for this proposition may be found in the cases cited in note 5 below.

3. Villars v. Baffoe (1909) Ren. 549.

4. On property acquired with the help of a wife, see: Manu v. Mensah (1953) D.C. (Land) '52-'55, 156; Quartey v. Martey [1959] G.L.R. 377; Adom v. Kwarley [1962] G.L.R. 112; Clerk v. Clerk (1968) C.C. 99; Sarbah, Fanti Customary Laws (2nd and 3rd edd.), p.63; Danquah, Akan Laws and Customs, p. 208. On property acquired with the help of a son or daughter, see: Kosia v. Nimo (1950) D.C. (Land) '48-'51, 239;

Okwabi v. Adonu (1957) 2 W.A.C.A. 268; Adjabeng v. Kwabla [1960] G.L.R. 37; Adom v. Kwarley; above; Sarbah, op. cit., pp.60, 63; Ollennu, Principles of Customary Land Law in Ghana (hereafter referred to as P.C.L.L.G.) pp.39-40. It appears that in Ekem v. Nerba (1947) D.C. (Land) '38-'47, 268, a husband and wife had been joint owners of land.

5. The following is a selection of the more explicit statements of the principle: Kwoba v. Propaganda Fide (1948) D.C. (Land) '48-'51, 22; Beyeden v. Bekoe (1952) D.C. (Land) '52-'55, 38; Ampretwum v. Donkor (1955) D.C. (Land) '52-'55, 292; Arthur v. Ayensu (1957) 2 W.A.L.R. 357; Ansah v. Ankrah (1958) 3 W.A.L.R. 317; Ennin v. Prah [1959] G.L.R. 44; Serwah v. Kesse (1959) P.C.L.L.G. 201; Okoe v. Ankrah [1961] 1 G.L.R. 109, P.C.L.L.G. 245; Krakue v. Krabah, S.C. 24th June 1963.

6. This question is discussed in "Two Problems of Matrilineal Succession" (1969) 1 Review of Ghana Law 6.

7. Ollennu, The Law of Testate and Intestate Succession in Ghana (hereafter referred to as L.T.I.S.G.), pp. 82-83.

8. The most recent (and emphatic) decision on this point is Atuahene v. Amofa (1969) C.C. 154.

9. Amamoo v. Clement (1871) Sar. F.C.L. 180; Barnes v. Mayan (1871) Sar. F.C.L. 180; Halmond v. Daniel (1871) Sar. F.C.L. 182; Inkrabea v. Acquakoah (1887) Sar. F.L.R. 50; Boham v. Marshall (1892) Sar. F.C.L. 193; Mensa v. Krakue (1894) Sar. F.L.R. 86; Sarbah, op. cit. pp. 100, 105-7.

10. Relevant cases from this period are: Richardson v. Fynn (1909) Earn 13; Hutchison v. Essiabah (1926) F.C. '26-'29, 83; Williams v. Payin (1946/D.C. (Land) '38-'47, 232; Agyei v. Addo (1950) D.C. (Land) '48-'51, 288; Adoko v. Larbi (1955) D.C. (Land)

11. [1961] 2 G.L.R. 573 at 582. Another reported case is Quartey v. Martey [1959] G.L.R. 377.

12. [1963] 1 G.L.R. 464.

13. (1965) C.C. 105.

14. See also: Kwakye v. Tuba (1961) 2 G.L.R. 720; Kraah v. Oduro (1966) C.C. 14.

15. The point is mentioned by Ollennu, L.T.I.S.G., pp. 272-74, 282-83.

16. See L.T.I.S.G., Chaps. 9-10.

17. Attipoe v. Shoucaire (1948) D.C. (Land) '48-'51, 17; Videwu v. Ayivor, Land Court (Accra) 25th Feb. 1949; Khoury v. Tamakloe (1950) D.C. (Land) '48-'51, 201; Husunukpe v. Dzegblor (1951) D.C. (Land) '48-'51, 393; Akakpo v. Afafa (1952) D.C. (Land) '52-'55, 116; Tay v. Adamah (1952) D.C. (Land) '52-'55, 121; Tamakloe v. Attipoe, West African Court of Appeal, 22nd June 1953, Djaka v. Amemadokpor (1952) D.C. (Land) '52-'55, 191; Ahiator v. Gomashie (1955) D.C. (Land) '52-'55, 325; Horkey v. Horkey (1965) C.C. 119.

18. 1960 Population Census of Ghana, Special Report "E", Table 29. The percentages cited are the totals for two classes listed in the census: "Church and ordinance", and "Customary and church or ordinance". The second class includes marriages which are "customary and church". These do not always rank as ordinance marriages. Cf. op. cit., p. lxxxvi, where a distinction is drawn between a combination of customary and church, and a combination of customary and ordinance marriages. This distinction is not reflected in, and is difficult to reconcile with, the figures in the table.

19. 1959 G.L.R. 390.

20. This view was expressed in Coleman v. Shang, at p. 409, in respect of Osu customary law.



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